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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Guy Deneuvillers

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EXAMINER

FISHER, ELANA BETH

ART UNIT

PAPER NUMBER

3733

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,935	Applicant(s) DENEUVILLERS ET AL.	
	Examiner ELANA B. FISHER	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22,25,27-33,36-41 and 43-53 is/are pending in the application.
- 4a) Of the above claim(s) 51-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22,25,27-33,36-41 and 43-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 43-50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 43 originally and continues to set forth that "the retaining member includes lateral shoulders." The amendments further set forth a shoulder formed between the anterior and posterior portions. Accordingly, the claim has two sets of shoulders for the support, which is not disclosed by applicant.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 22, 25, 28-32, 38-39 and 43-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Zucherman et al. (U.S. Publication 2001/0016743).

Zucherman et al. disclose an intervertebral support (412) comprising an anterior portion (see diagram provided) and a posterior portion (see diagram provided). The

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anterior portion has a planar face (426) and upper and lower faces (see diagram provided) configured to respectively receive underlying and overlying laminae of two adjacent vertebrae. The posterior portion (see diagram provided) comprises a support surface (see diagram provided) having at least a height greater than a height of the planar face (426) so as to form a retaining member (FIG 63). The anterior portion (see diagram provided) extends outwardly from the support surface of the posterior portion (FIG 63) so that a shoulder is formed between the planar face of the anterior portion and the support surface of the posterior portion (FIG 63). The upper and lower faces (see diagram provided) are located on the shoulder and form grooves.

Additionally, the posterior portion is capable of dampening movements between two adjacent vertebrae. Upon implantation, a bottom face of the posterior portion can bear on a top portion of a process at a bottom of a space fitted with the support (412). The posterior portion is prismatic in shape (see diagram provided) and of a height that corresponds to a spacing between the adjacent vertebrae, presenting at least one rounded corner, a top face of the posterior portion being triangular in shape, so as to receive the junction point formed by the lamina and processes (see diagram provided). Additionally, the posterior portion presents a tapering shape (see diagram provided). The posterior portion presents a top surface (420) and a bottom surface (422) that are flared to the anterior end of the support, tapering progressively towards the posterior ends of said surfaces (FIG 63), and capable of receiving the junction point formed by the lamina and the process. Further, the anterior portion (see diagram provided) is constituted out of rigid biocompatible material.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 36-37 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zucherman et al. (U.S. Publication 2001/0016743).

Zucherman et al. disclose an intervertebral support according to claims 22 and 43 above however fail to disclose that the posterior portion is made of silicone or that a biocompatible knit fabric covers at least part of the posterior portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the posterior portion (62) be made of silicone having hardness lying in the range 40 to 80 on the Shore A scale or be covering at least in part by a biocompatible knit fabric, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 33 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zucherman et al. (U.S. Publication 2001/0016743) as applied to claims 22 and 43 above, and further in view of Castro (U.S. Patent 6,743,257).

Zucherman et al. disclose a support according to claims 22 and 43 above, however fail to disclose that a core of the posterior portion is pierced by a through recess. Castro discloses a support (FIG 1) comprising a posterior portion (9) that is pierced with

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through recess (18) for relieving stress on the implant (Column 8). Therefore, it would have been obvious to one skilled in the art to modify the support taught by Zucherman et al. by having a through recess pierced through the posterior portion because it aids in relieve stress on the implant due to anatomical loads from adjacent vertebrae.

8. Claims 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zucherman et al. (U.S. Publication 2001/0016743) as applied to claim 22 above, and further in view of Senegas (U.S. Patent 6,761,720).

Zucherman et al. discloses an intervertebral support according to claim 22 above, however fail to disclose additionally retaining means. Senegas discloses an intervertebral support comprising retaining member (8a, 10a, 8b, 10b) and additionally retention means constituted by ligaments (4a, 4b) crossing a center of the support and holes (12a, 14a, 16a, 12b, 14b, 16b) extending vertically for passing the ligaments, such that the ligaments extend a height of the support (FIG 2). It therefore would have been obvious to one skilled in the art to modify the support taught by Zucherman et al., by having additional retaining means, as is taught by Senegas because the additionally retaining means provide another element for securely attaching the support to surrounding vertebrae.

Response to Arguments

9. Applicant's arguments with respect to claims 22, 25, 27-33,36-42, and 43-50 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELANA B. FISHER whose telephone number is (571)270-3643. The examiner can normally be reached on Monday through Friday from 8:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571)272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elana B Fisher/
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733